
THE COMPETITION POLICY INSTITUTE S
REALISTIC CHOICE APPROACH TO THE PUBLIC INTEREST STANDARD

1. Each Bell Operating Company (BOC) application to provide long distance service must meet the competitive checklist and the public interest test. Thus, the public interest must mean something more than the checklist. (An amendment on the Senate floor to equate the public interest test with completion of the competitive checklist was defeated.)
2. While the competitive checklist measures competition from the perspective of the carriers, the public interest test offers the FCC the opportunity to examine the question of BOC entry into long distance from the perspective of consumers.
3. In applying the public interest test, the FCC should examine all factors that affect whether approving a section 271 application would benefit consumers. These factors include whether consumers have a **realistic choice** for local telephone service, whether BOC entry into long distance will help to lower long distance rates, whether BOC entry into long distance will raise local rates, and many others.
4. Of these factors, CPI believes that the Commission should give primary importance, or substantial weight, to whether consumers in the state have a **realistic choice** of alternate local telephone providers before BOC entry into long distance is granted.
5. The **realistic choice** approach allows the FCC to conduct a reality check of the local telephone marketplace to ensure that its decision on BOC entry is not based entirely on legalities. The **realistic choice** approach allows the FCC to examine whether the local telephone market is truly functioning in a manner that allows consumers to choose an alternate local service provider before BOC entry into long distance is granted.
6. The availability of a **realistic choice** for consumers of local telephone service is critically important to any long distance application for several reasons:
 - a) The availability of a **realistic choice** is the best way to determine that all the barriers to local competition have been removed. The best proof that the market is open is if competitors are actually entering the market and consumers have a **realistic choice** of alternate carriers.
 - b) If consumers have an opportunity to choose an alternate local provider, the BOC's incentives to raise local rates or engage in anticompetitive conduct will be greatly reduced. In other words, consumers are likely to benefit from BOC entry into long

distance only if the BOC has competitive pressures to pass on these benefits to consumers.

- c) The benefits to consumers of adding one additional competitor for local telephone service (essentially doubling the number providers) are far greater than the benefits of adding one more long distance competitor (the BOC) to a market of over 400 long distance companies.
7. If, rather than adopt CPI's **realistic choice** standard, the FCC adopts the DOJ's irreversibly opened to competition standard, the FCC must examine ALL factors that affect whether a market is open to competition. For instance, the FCC must take into account actions by the BOCs to delay competition that are not included in the checklist (such as PIC-freezes, withholding billing information, the lack of intraLATA toll dialing parity, locking customers into long-term contracts, etc.) AND must take into account practices of other entities (such as excessive municipal regulation of new entrants and actions by landlords of multiple dwelling units) to determine whether a market is truly open. Several cities in Michigan, for instance, have taken action that discourages competition.

Since it is an end results test, the **realistic choice** approach is much simpler to administer.

8. The **realistic choice** approach is:
- a) NOT a market share test. The **realistic choice** standard measures whether consumers can choose a competitor, not whether they have subscribed to a competitor.
 - b) NOT adding to the competitive checklist. The FCC should not use the **realistic choice** standard as a precondition to interLATA entry in the same way that checklist items are preconditions. Whether consumers have a **realistic choice** is one factor, albeit the most important factor, of several that the FCC should consider as part of its public interest analysis.
9. As part of a **realistic choice** approach, the FCC should examine:
- a) whether urban, suburban and rural customers have a realistic choice;
 - b) whether large businesses and small businesses have a realistic choice;
 - c) whether residential customers in apartment buildings and residential customers in single-family homes have a realistic choice;
 - d) whether competitors are available in one location or throughout the state.
 - e) whether high-income subscribers, middle-income subscribers and low-income

subscribers have a realistic choice.

It is not necessary for the Commission to find that every one of these categories of consumers have a **realistic choice** available to them. The Commission should gather evidence for each of these subgroups. The more categories of consumers that have a **realistic choice**, the more likely the BOC application would satisfy the public interest.

10. Given that there are already well over 50 local telephone competitors unaffiliated with long distance companies, it is inconceivable that they would all collude to delay their entry into the local market simply to keep the BOCs from receiving interLATA approval.